

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

PacifiCorp

Docket No. EL03-163-000

ORDER APPROVING CONTESTED SETTLEMENT AGREEMENT

(Issued March 8, 2004)

1. On August 29, 2003, Commission Trial Staff (Trial Staff) and PacifiCorp filed a Settlement Agreement. The Settlement Agreement resolves all issues related to PacifiCorp that were set for hearing in Docket No. EL03-163-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order).¹
2. On September 30, 2003, the California Independent System Operator Corporation (ISO) filed comments objecting in part to the Settlement Agreement. On September 30, 2003, the California Parties² and the Port of Seattle, Washington (Seattle) filed comments opposing the Settlement Agreement. Also on September 30, 2003, Wah Chang filed comments calling for the rejection or modification and clarification of the Settlement Agreement.
3. On October 20, 2003, the California Parties filed reply comments in response to the initial comments of Wah Change and Seattle. Also on October 20, 2003, Trial Staff filed general reply comments addressing the California Parties' objections. On October 20, 2003, Trial Staff also filed specific reply comments in support of the Settlement Agreement. On October 22, 2003, Trial Staff filed a motion to supplement its general reply comments in order to address the "Information to be Provided with Settlement Agreements," as described in a Notice to the Public issued by the Chief Administrative Law Judge on October 15, 2003. Also on October 20, 2003, PacifiCorp filed reply comments responding to the objecting parties' comments. On December 15,

¹ American Electric Power Service Corp., et al., 103 FERC ¶ 61,345 (2003), reh'g denied, 106 FERC ¶ 61,020 (2004).

² The California Parties are the People of the State of California ex rel. Bill Lockyer, Attorney General; the California Electricity Oversight Board; the California Public Utilities Commission; Pacific Gas and Electric Company; and Southern California Edison Company.

2003, the presiding judge certified the Settlement Agreement to the Commission as contested, but recommending its approval.³

4. The Settlement Agreement constitutes a reasonable resolution of this proceeding and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against PacifiCorp that were set for hearing in the Gaming Order. In this regard, PacifiCorp will be returning \$67,745.00, which is the total revenues (and not merely the profits—and thus more than could be achieved in litigation⁴) associated with PacifiCorp's alleged participation in the gaming practice of Wheel Out. Furthermore, given our determination in our order on rehearing not to expand the scope of this proceeding, the release provision in Article IV, section 4.3, of the Settlement Agreement, releasing PacifiCorp from further scrutiny of its trading activities in California during the period January 1, 2000 through June 20, 2001, is reasonable.⁵

5. Issues raised by the ISO, the California Parties, Seattle, and Wah Chang go to the scope of these proceedings, are thus essentially requests for rehearing of the Gaming Order, and, in fact, were addressed in the rehearing order issued on January 22, 2003.⁶ Such matters thus need not be further addressed here.

6. This order terminates Docket No. EL03-163-000.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

³ The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judge's certification. See PacifiCorp, 105 FERC ¶ 63,043 (2004) (Certification).

⁴ See Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71.

⁵ Compare Certification at P 23, 39, 48, 55, with supra note 1. PacifiCorp is not a respondent in Docket No. EL03-180-000, et al. In this regard, PacifiCorp differs from Idaho Power Company, whose settlement we are addressing contemporaneously. See Idaho Power Company, 106 FERC ¶ 61,208 (2004) (Docket No. EL03-156-000). However, as we do not read the release provision as excusing PacifiCorp from any amounts it may owe in Docket Nos. EL00-95-000, et al., and IN03-10-000, we do not here excuse PacifiCorp from any amounts it may owe in those proceedings.

⁶ See supra note 1. To the extent that these issues are addressed in the rehearing order, we incorporate by reference the discussion of these issues in that order.